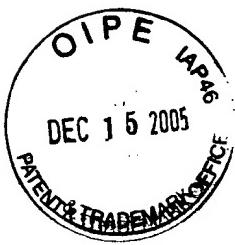


12-16-05

ANDREWS  
ATTORNEYS  
KURTH LLP



111 Congress Avenue, Suite 1700  
Austin, Texas 78701  
512.320.9200 Phone  
512.320.9292 Fax  
andrewskurth.com

Scott Denko  
(512) 320.9259 Direct  
scottdenko@andrewskurth.com

December 15, 2005

**VIA EXPRESS MAIL NO. EV760876142US**

Commissioner for Patents  
Mail Stop Petition, Attn: Tom Hawkins  
P.O. Box 1450  
Alexandria, VA 22313-1450

**VIA EXPRESS MAIL NO. EV760876244US**

Commissioner for Patents  
Mail Stop Technology Center 2122, Attn: Peter Wong  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting  
Analysis Data From A Target System Executing Software Instrumented With Tag  
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Commissioner:

Enclosed please find a copy of the following which were previously filed with the U.S. Patent and Trademark Office on April 16, 2004 and September 20, 2004:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action;
2. Express Mail receipt dated 04/16/04 and 09/20/04; and
3. Return Postcard marked "Received by Office of Petitions 04/19/04 and 09/20/04".

December 15, 2005

As indicated from the attached correspondence, we previously spoke with the examiner, Chameli Das, regarding this matter. On September 20, 2004, we complied with her request to submit another copy of the petition first filed on April 16, 2004.

In March 2005, our office spoke with Ms. Hicks in the Office of Petitions who advised us to contact Examiner Tuan T. Dam. On March 24, 2005, Examiner Dam advised us to contact Ms. Hicks. We spoke with Ms. Hicks again and she advised us that the decision on the petition falls under the discretion of the Director of the Technology Center, which is Peter Wong. That same day, we spoke with Jeannie Mines, assistant to Peter Wong, who stated that she would look into the matter. Our office left another voicemail for Ms. Mines on December 7, 2005 but we have not yet received a response.

Per the attached printout from PAIR on the US Patent and Trademark Office Website, the status of this matter still shows abandoned. To date, we have received no substantive communications or correspondence from the USPTO regarding this matter despite our multiple efforts both written and by telephone to get a response. We will be calling and writing again so we must with reluctance insist that the Office respond in substance and without further delay to the Petition that was first filed on April 19, 2004.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-3534 on which account the undersigned is authorized to charge.

Yours very truly,

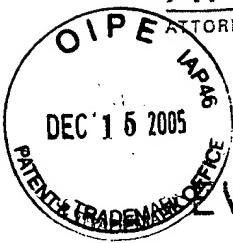


J. Scott Denko  
Registration No. 37,606

12-16-05

SFW

ANDREWS  
ATTORNEYS  
KURTH LLP



V434215647US

111 Congress Avenue, Suite 1700  
Austin, Texas 78701  
512.320.9200 Phone  
512.320.9292 Fax  
[andrewskurth.com](http://andrewskurth.com)

Scott Denko  
(512) 320.9259 Direct  
[scottdenko@andrewskurth.com](mailto:scottdenko@andrewskurth.com)

September 20, 2004

**VIA EXPRESS MAIL NO. EV434215647US**

Assistant Commissioner for Patents  
Attn: Tom Hawkins  
Mail Stop Petition  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting  
Analysis Data From A Target System Executing Software Instrumented With Tag  
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Assistant Commissioner:

Enclosed please find a copy of the following which were previously filed with the U.S. Patent and Trademark Office on April 16, 2004:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action;
2. Express Mail receipt dated 04/16/04; and
3. Return Postcard marked "Received by Office of Petitions 04/19/04"; and

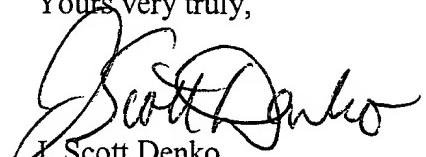
We spoke with the examiner, Chameli Das, regarding this matter. She indicated we should file another copy of the petition because she has not seen it. Accordingly, please file and make the afore-mentioned documents a part of the record hereof.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Assistant Commissioner for Patents  
September 20, 2004  
Page 2 of 2

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,



J. Scott Denko  
Registration No. 37,606

JSD/ad  
Encls.

ANDREWS  
ATTORNEYS  
KURTH LLP



111 Congress Avenue, Suite 1700  
Austin, Texas 78701  
512.320.9200 Phone  
512.320.9292 Fax  
andrewskurth.com

Scott Denko  
(512) 320.9259 Direct  
scottdenko@andrewskurth.com

April 16, 2004

VIA EXPRESS MAIL NO. EV434215616US

EV434215616US

Commissioner for Patents  
Mail Stop Petition  
Attn: Tom Hawkins  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting  
Analysis Data From A Target System Executing Software Instrumented With Tag  
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Commissioner:

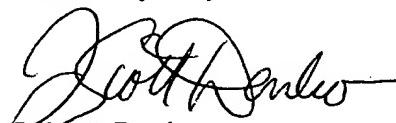
Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,



J. Scott Denko  
Registration No. 37,606

As of 4/12/04

METROWERKS PATENT DOCKET

	Appl. No.	Filing Date	US Patent No	Inventors	Status – Last Action	Action Needed
Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instruments with Tag Statements and Methods for Use Thereof (420)	09/494,765	1/31/00	Birum, Ellis; Tinker	10/28/03 – Filed Amendment and Response 10/29/03 – Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 – Rec'd Notice of Acceptance of POA from PTO		



**BEST AVAILABLE COPY**

Exhibit B

## PATENT APPLICATION INDEX

Docket No. 650059-420 Client Ref. No.  
 Inventor Derrick Jason Birum, Richard Donald Ellis and Jeffrey Lee Tinker  
 Invention Title SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

U.S. Filing Date January 31, 2000

U.S. Application No. 09/494,765

Examiner

Art Unit 2762

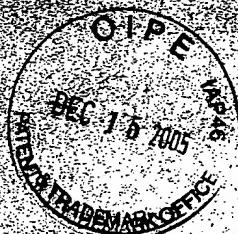
Phone No. 0

File History

Small Entity NO

Assigned To Metrowerks, recorded on 04/28/03, at Reel 013609, Frame 0862

General Authorization Filed: January 31, 2000



BEST AVAILABLE COPY

	Document	Date Filed with PTO	Date Mailed from PTO	Due Date
1.	Application (w/ Dec. Assign., General Authorization and Information Disclosure Statement)	01/31/2000		
2.	Request for Refund and Small entity Statement	03/15/00		
3.	Acknowledgement of Request for Refund		03/28/00	
4.	Recorded Assignment		04/18/00	
5.	FILING RECEIPT		04/25/00	
6.	European Search Report rcvd from foreign associate		06/20/01	08/20/01
7.	Supplemental Information Disclosure Statement w/EP Search	08/15/01		
8.	Supplemental IDS with 12 References	06/01/03		
9.	Recorded Assignment -Assigned to Metrowerks	04/28/03		
10.	Office Action	04/28/03	07/28/03	
11.	Petition for extension of time; amendment & response	10/28/03		10/28/03
12.	Declaration of New Atty with New Per Atty's Name	10/29/03		
13.	Change of Correspondence Address		4/8/04	
14.	Notice of Abandonment			
15.	Notice of Acceptance of POA		3/30/04	
6.				
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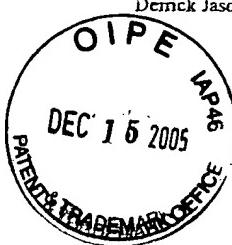


UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,765	01/31/2000	Derrick Jason Birun	120073.420	3907

36485 7590 04/08/2004  
J. SCOTT DENKO  
ANDREWS & KURTH LLP  
111 CONGRESS AVE., SUITE 1700  
AUSTIN, TX 78701



EXAMINER	
DAS, CHAMELI	
ART UNIT	PAPER NUMBER
2122	13

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Date Received: 4/15/04

Date Due: \_\_\_\_\_

Docketed by: \_\_\_\_\_

Exhibit A



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
9/494 765			



BEST AVAILABLE COPY

EXAMINER

ART UNIT

PAPER NUMBER

13

DATE MAILED:

NOTICE OF ABANDONMENT

This application is abandoned in view of:

ABANDONMENT  
CONCERNED PERSON IS:  
TOM HAWKINS

- Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_ 305-8380.
- A reply (with Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_ which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- No reply has been received.



Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

- The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).
- The submitted fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.  
The issue fee by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required, by 37 CFR 1.18(d) is \$ \_\_\_\_\_.

The issue fee and publication fee, if applicable, have not been received.

- Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

- Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- No corrected drawings have been received.

- The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

- The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

- The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

- The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term

**BEST AVAILABLE COPY**

Attorney Docket No. 650059.420



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Filing Date: 01/31/00

Examiner: Chameli Das

Group: 2122

Assistant Commissioner for Patents

Mail Stop Petition

Attn: Tom Hawkins

P.O. Box 1450

Alexandria, VA 22313-1450

**CERTIFICATE OF MAILING UNDER 37 CFR §1.10**

I hereby certify that this paper or fee is being deposited with the United States Postal Service via Express Mail EV434215616US addressed to Assistant Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450 on the 16 day of April, 2004.

  
\_\_\_\_\_  
Angelia Dedek

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

### REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

### PETITION FEE

The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

### SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By:   
J. Scott Denko  
Attorney for Applicant  
Registration No. 37,606

ANDREWS KURTH, L.L.P.  
111 Congress Ave., Suite 1700  
Austin, Texas 78701-4069  
(512) 320-9259 (office)  
(512) 320-9292 (facsimile)

Date: April 16, 2004

ANDREWS  
ATTORNEYS  
KURTH LLP



Andrews & Kurth LLP.  
111 Congress Avenue, Suite 1700  
Austin, Texas 78701  
512.320.9200 Phone  
512.320.9292 Fax  
[andrewskurth.com](http://andrewskurth.com)

J. Scott Denko  
512.320.9259 Direct  
[scottdenko@aklp.com@andrewskurth.com](mailto:scottdenko@aklp.com@andrewskurth.com)

October 29, 2003

**BY EXPRESS MAIL**  
**AIRBILL NO. EV271668782US**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765  
Title: "Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof"  
Filing Date: 01/31/00.  
Inventor: Derrick J. Birum, et al  
Assignee: Metrowerks Corporation  
Examiner: A. Khatri  
Group: 2762  
Docket No. 120073.420

Dear Commissioner:

Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

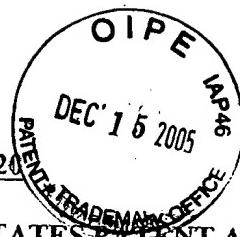
Yours truly,

ANDREWS KURTH LLP



J. Scott Denko  
Exhibit "C"

Attorney Docket No.: 120073.420



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM

Group Art Unit: 2762

Application No.: 09/494,765

Examiner: A. Khatri

Filing Date: January 31, 2000

Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

A.  An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

B.  A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER  
To: APPLIED MICROSYSTEMS CORPORATION  
The document was recorded in the U.S. Patent and Trademark  
Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION  
To: METROWERKS CORPORATION  
The document was recorded in the U.S. Patent and Trademark  
Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 11/29/03

Signature:

Name:

Title:

Company name: METROWERKS CORPORATION

David Clinton

Vice-President of Segment Marketing



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM, et al. Group Art Unit: 2762  
Application No.: 09/494,765 Examiner: A. Khatri  
Filing Date: January 31, 2000 Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with Customer Number 36,485 to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.

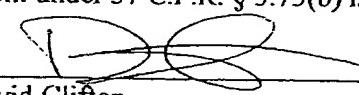
Please address all correspondence to **J. Scott Denko** at the address corresponding to Customer Number 36,485, currently:

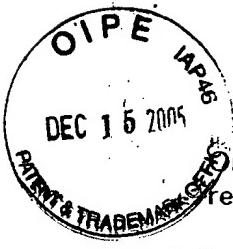
J. Scott Denko  
ANDREWS KURTH LLP  
Suite 1700  
111 Congress Ave., Suite 1700  
Austin, Texas 78701

I am the:

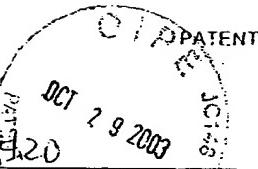
Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

Dated: 10/29/03

Signature:   
Name: David Clinton  
Title: Vice-President of Segment Marketing  
Company name: METROWERKS CORPORATION



# BEST AVAILABLE COPY



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office

Applicant: BIRUM

Docket No. 120073-420

Assignee: Metrowerx

Resp. Atty. DENKO

Filing Date: 11/31/00

Date Mailed: 10-29-03

Serial No.: 09/1494,765

Date Due:

Title: Software Analysis System Having An Apparatus  
for Selectively Selecting and/or Data...

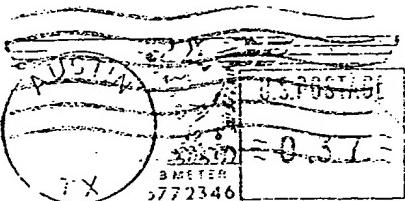
- Transmittal Letter
- Application PCT
- Utility
- Conversion
- Prov
- Div
- Cont
- CPA
- Reissue
- Spec pages
- Claims pages
- Drawings pages
- Abstract pages
- Declaration
- POA
- Form 1449, IDS
- Assignment w/ Recordation Cover Sheet
- Cert. of Mailing, First Class
- Authorization to Charge Deposit Account

50-0897

Cert. of Express Mail No. E 17166878243

Other Statement Under 37 CFR 8.3-73(b)

Verification of POA with new POA and change correspondence address



ATIN: INTELLECTUAL PROPERTY SECTION

ANDREWS & KURTH, L.L.P.

111 CONGRESS AVE., SUITE 1700

AUSTIN, TEXAS 78701-4069

*A. Decker*

*650059.420*

# BEST AVAILABLE COPY



EV 271668782 US

## ORIGIN (POSTAL USE ONLY)

PO ZIP Code <b>78701</b>	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In <b>10 29 03</b>	Postage <b>\$ 13.65</b>	
Mo. Day Year 12 Noon <input type="checkbox"/> 3 PM <input type="checkbox"/>		
Time In <b>928</b>	Military <input type="checkbox"/>	Return Receipt Fee <input type="checkbox"/>
<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	
Weight <b>24 lbs.</b>	Int'l Alpha Country Code <i>EP</i>	COD Fee <input type="checkbox"/>
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Accepted Client Initials <i>EP</i>	Total Postage & Fees <b>\$ 13.65</b>

## CUSTOMER USE ONLY

### METHOD OF PAYMENT:

Express Mail Corporate Acct. No.

UNITED STATES POSTAL SERVICE

## DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
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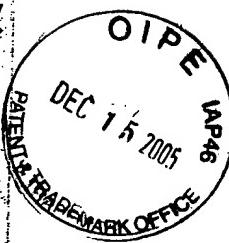
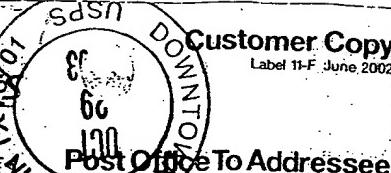
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DOWNTOWN STATION  
AUSTIN TX 78701-2924  
10/29/03 04:28PM

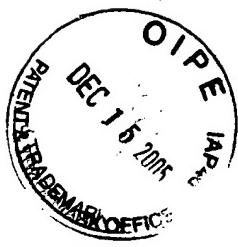
Store USPS  
Wkstn sys5007  
Casher's Name ROBERT  
Stock Unit Id HERMOSILLO  
PO Phone Number 800-215-8777  
USPS # 4879830130

Exp. Mail PO-ADD 22313 0.00  
Destination: 22313  
Weight: 2.40 oz  
Postage Type: Affixed  
Affix. Post.: -13.65  
Total Cost: 13.65  
Base Rate: 13.65  
Label #: Ev271668782US  
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<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is indicated. I wish delivery to be made without obtaining signature of addressee. I understand that if delivery employee judges that article can be left in secure location, he or she may do so. Employee's signature constitutes valid proof of delivery. NO. D [Signature]    Weekday [Signature]    Saturday [Signature]		
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09593-150338		

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Attn: Tom Hawkins		

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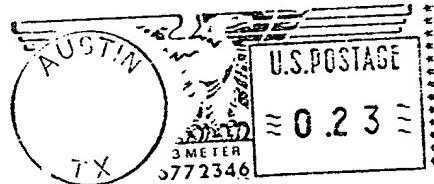


PATENT

On the date stamped hereon, the following was **RECEIVED**  
received in the U.S. Patent and Trademark Office:

Applicant: Dervich Brium Docket No. 650057-420  
 Assignee: Metrowerks Corp Resp. Atty: Den OFFICE OF PETITIONS  
 Filing Date: 1/31/00 Date Mailed: 4/16/04  
 Serial No.: 09/494 765 Date Due:  
 Title: Software Analysis System Having An Algorithmic Selection Capability  
Capable of Generating Data from a Next System . . .

- Transmittal Letter
- Application PCT  Utility  Conversion  
Prov  Div  Cont  CPA  Reissue  
Spec  pages; Claims  pages  
Drawings  pages; Abstract  pages
- Declaration  POA
- Form 1449, IDS
- Assignment w/ Recordation Cover Sheet
- Cert. Of Mailing, First Class
- Authorization to Charge Deposit Account  
50-0897
- Cert. Of Express Mail No. EV 342156164S
- Other Petition To Withdraw Holder's Abandonment Based On  
Failure To Receive Office Action



*A Dedur*

ATIN: INTELLECTUAL PROPERTY SECTION  
 ANDREWS & KURTH, L.L.P.  
 111 CONGRESS AVE., SUITE 1700  
 AUSTIN, TEXAS 78701-4069

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<input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee	
Weight lbs. ozs.	Int'l Alpha Country Code	COD Fee	Insurance Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials	Total Postage & Fees \$	

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WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

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TO: (PLEASE PRINT)  
Petitions  
COMMISSIONER FOR PATENTS  
PO BOX 1450  
ALEXANDRIA VA 22313-1450  
  
Attn: Tom Hawkins

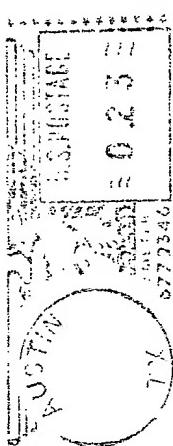
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G. Deedee  
ATTN: INTELLECTUAL PROPERTY SECTION  
ANDREWS KURTH, LLP  
111 CONGRESS AVE., SUITE 1700  
AUSTIN, TEXAS 78701-4069

PATENT

On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: Birum Docket No. 650059.420 ( 150331 )  
Assignee: Metrawerks Corp Resp. Atty: DeNKO  
Filing Date: 1/31/00 Date Mailed: 9/20/04  
Serial No.: 09/1494 765 Date Due: \_\_\_\_\_

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System . . .

- Transmittal Letter       Check No. \_\_\_\_\_ for \$ \_\_\_\_\_  
 Application PCT \_\_\_\_\_ Utility \_\_\_\_\_ Conversion \_\_\_\_\_       Response to Office Action       Amendment  
Prov \_\_\_\_\_ Div \_\_\_\_\_ Cont \_\_\_\_\_ CPA \_\_\_\_\_ Reissue \_\_\_\_\_  
Spec \_\_\_\_\_ pages; Claims \_\_\_\_\_ pages       Extension of Time Request \_\_\_\_\_ mos.  
Drawings \_\_\_\_\_ pages; Abstract \_\_\_\_\_ pages       Petition for \_\_\_\_\_  
 Declaration       POA       Notice of Appeal       Appeal Brief  
 Form 1449, IDS       Formal Drawings \_\_\_\_\_ sheets       Issue Fee  
 Assignment w/ Recordation Cover Sheet       Maintenance Fee       Mntc Fee Addressee  
 Cert. Of Mailing, First Class       PCT Request \_\_\_\_\_ pages       PCT Fee Calc Sheet  
 Authorization to Charge Deposit Account       Chapter II Demand for Substantive Examination  
50-0897       Response to Invitation to Correct

- Cert. Of Express Mail No. EV 434215647US  
 Other copy of Petition to Withdraw Holding of Abandonment based on failure to receive  
Office action mailed 4/16/04; Express Mail Form dictated 4/16/04; and  
Return post card mailed 4/16/04 received by Office of Petitions 4/16/04



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Cant: Bircum Docket No. 160059-765  
 Inee: Motorworks Corp Resp. Atty: Junker  
 I Date: 11/31/04 Date Mailed: 9/20/04  
 I No.: 091494-765 Date Due:

Software Analysis System Having An Interface for Selectively  
 Extracting Analysis Data from a Target System

Transmittal Letter  Check No. \_\_\_\_\_ for \$ \_\_\_\_\_  
 Application PCT  Utility  Conversion \_\_\_\_\_  
 Prov  Div  Cont  CPA  Reissue \_\_\_\_\_  
 Spec \_\_\_\_\_ pages; Claims \_\_\_\_\_ pages  
 Drawings \_\_\_\_\_ pages; Abstract \_\_\_\_\_ pages  
 Declaration  POA  
 Form 1449, IDS  Notice of Appeal  Appeal Brief  
 Assignment w/ Recordation Cover Sheet  Formal Drawings \_\_\_\_\_ sheets  Issue Fee  
 Cert. Of Mailing, First Class  Maintenance Fee  Mntc Fee Addressee  
 Authorization to Charge Deposit Account  PCT Request \_\_\_\_\_ pages  PCT Fee Calc Sheet  
 50-0897  Chapter II Demand for Substantive Examination  
 Cert. Of Express Mail No. EV 434215647US  Response to Invitation to Correct

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<input type="checkbox"/> WAIVER OF SIGNATURE (Domestic Only) Additional merchandise insurance is void if waiver of signature is requested. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that articles can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.		
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Federal Agency Acct. No. or Postal Service Acct. No.		
TO: (PLEASE PRINT)	PHONE ( )	
<i>LENKE 1502-1 (Rev)</i>		
A. J. LEONARD & SONS INC. 4411 COLONIAL RD. APT. 317 • 27000 ROANOKE, VA 24017-4411 FAX: 540-952-4411		
<i>A. J. LEONARD &amp; SONS INC.</i>		



**ANDREWS**  
ATTORNEYS

**KURTH LLP** **BEST AVAILABLE COPY**



111 Congress Avenue, Suite 1700  
Austin, Texas 78701  
512.320.9200 Phone  
512.320.9292 Fax  
andrewskurth.com

Scott Denko  
(512) 320.9259 Direct  
scottdenko@andrewskurth.com

April 16, 2004

VIA EXPRESS MAIL NO. EV434215616US

**EV434215616US**

Commissioner for Patents  
Mail Stop Petition  
Attn: Tom Hawkins  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765

Filing Date: 01/31/00

Title: Software Analysis System Having An Apparatus For Selectively Collecting  
Analysis Data From A Target System Executing Software Instrumented With Tag  
Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Examiner: Chameli Das

Group: 2122

Atty Docket No.: 650059.420

Dear Commissioner:

Please find enclosed for filing the following:

1. Petition To Withdraw Holding of Abandonment Based On Failure To Receive Office Action; and
2. A return postcard for confirmation of receipt.

We believe that no fees are due related to the filing of the above-referenced Petition. If, however, the Commissioner deems that fees are due, then the Commissioner is hereby authorized to debit the costs of such fees to Deposit Account No. 50-0897 on which account the undersigned is authorized to charge.

Please return the enclosed postcard to confirm receipt of the above-referenced items.

Yours very truly,

J. Scott Denko  
Registration No. 37,606



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Attorney Docket No. 650059.420

## THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/494,765

Title: Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof

Inventor: Derrick Jason Birum

Assignee: Metrowerks Corporation

Filing Date: 01/31/00

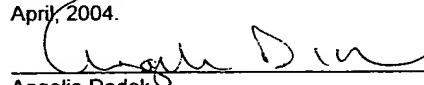
Examiner: Chameli Das

Group: 2122

Assistant Commissioner for Patents  
Mail Stop Petition  
Attn: Tom Hawkins  
P.O. Box 1450  
Alexandria, VA 22313-1450

### CERTIFICATE OF MAILING UNDER 37 CFR §1.10

I hereby certify that this paper or fee is being deposited with the United States Postal Service via Express Mail EV434215616US addressed to Assistant Commissioner for Patents, Mail Stop Petition, P.O. Box 1450, Alexandria, VA 22313-1450 on the 16 day of April, 2004.

  
Angelia Dedek

### PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

The Applicant respectfully petitions the U.S. Patent and Trademark Office to withdraw the holding of abandonment of Patent Application No. 09/494,765 under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 O.G. 53 (Nov. 16, 1993).

Regarding the above-referenced application, the Applicant received a Notice of Abandonment mailed on April 8, 2004 which states as the cause of abandonment failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. Neither the Applicant or Applicant's representative received a Notice of Allowance and Issue Fee Due in this matter.

### REPLY AND STATEMENT

The Notice of Abandonment was mailed on April 8, 2004 and states as the cause of abandonment failure to timely pay a required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of a Notice of Allowance and Issue Fee Due. A copy of the Notice is attached as Exhibit "A".

The Applicant never received a Notice of Allowance and Issue Fee Due in this matter. A search of the file jacket and docket records maintained by the office of the Applicant's representative indicates that such Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered *had it been received* and docketed is attached as Exhibit "B".

The Applicant filed a "Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address" on October 29, 2003, which is attached as Exhibit "C". The filing of the Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address is evidenced by a copy of the return receipt postcard bearing the stamp of the United States Patent and Trademark Office indicating its receipt.

The Applicant hereby requests that a copy of the Notice of Allowance and Issue Fee due be promptly transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292 so that Applicant may submit the required Issue Fee and Publication Fee, if applicable.

### PETITION FEE

The Applicant believes that no fee is due with the filing of this Petition. However, if the Commissioner determines that such a fee is due, the Commissioner is hereby authorized to debit such fees from the firm Deposit Account No. 50-0897 on which the undersigned is authorized to sign.

### SUMMARY

The Commissioner is hereby authorized to charge any fee deficiency to our deposit account 50-0897.

The Applicant respectfully requests an early decision on this Petition and appreciates the attention of the Petitions Office and the Petitions Examiner. The Applicant asks that the Decision on Petition be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. The Applicant additionally requests a copy of the Notice of Allowance and Issue Fee Due be transmitted by facsimile to the Applicant's undersigned attorney at (512) 320-9292. Should the Petitions Examiner have any questions upon which the Applicant's attorney may be able to provide assistance, a phone call to the Applicant's attorney at the phone number listed below would be welcome.

Respectfully submitted,

By:

J. Scott Denko  
Attorney for Applicant  
Registration No. 37,606

ANDREWS KURTH, L.L.P.  
111 Congress Ave., Suite 1700  
Austin, Texas 78701-4069  
(512) 320-9259 (office)  
(512) 320-9292 (facsimile)

Date: April 16, 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,765	01/31/2000	Derrick Jason Birum	120073.420	3907
36485	7590	04/08/2004		
J. SCOTT DENKO ANDREWS & KURTH LLP 111 CONGRESS AVE., SUITE 1700 AUSTIN, TX 78701			EXAMINER	
			DAS, CHAMELI	
			ART UNIT	PAPER NUMBER
			2122	
DATE MAILED: 04/08/2004				

O P E IAPAS  
DEC 15 2005  
PATENT & TRADEMARK OFFICE

13

Please find below and/or attached an Office communication concerning this application or proceeding.

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Date Received: 4/15/04

Date Due: \_\_\_\_\_

Docketed by: \_\_\_\_\_

Exhibit A

**BEST AVAILABLE COPY**UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark OfficeAddress: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

PPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
9/4/04 765			



EXAMINER \_\_\_\_\_

ART UNIT \_\_\_\_\_

PAPER NUMBER \_\_\_\_\_

13

DATE MAILED:

**NOTICE OF ABANDONMENT**ABANDONMENT  
CONTACT PERSON IS:  
TOMMY AWKINS  
305-8380

This application is abandoned in view of:

- Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
- A reply (with Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_ which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- No reply has been received.

Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

- The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).
- The submitted fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.  
The issue fee by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required, by 37 CFR 1.18(d) is \$ \_\_\_\_\_.
- The issue fee and publication fee, if applicable, have not been received.

Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).

- Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- No corrected drawings have been received.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.

The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.

The decision by the Board of Patent Appeals and Interferences rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below: \_\_\_\_\_

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

**Respond to the Notice of Abandonment by one of the following:**

**Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required**

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA  
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

**Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required**

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
(Mark attention of a particular office or individual)  
By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

**Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)**

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

As of 4/12/04

METROWERKS PATENT DOCKET

	Appl. No.	Filing Date	US Patent No	Inventors	Status - Last Action	Action Needed
Software Analysis System Having an Apparatus for Selectively Collecting Analysis Data From a Target System Executing Software Instrumented with Tag Statements and Methods for Use Thereof (420)	09/494,765	1/31/00	Birum; Ellis; Tinker	10/28/03 - Filed Amendment and Response 10/29/03 - Filed Revocation of POA with New POA and Change of Correspondence Address 3/30/04 - Rec'd Notice of Acceptance of POA from PTO		

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Exhibit B

**PATENT APPLICATION INDEX**

Docket No. 650059-420 Client Ref. No.  
 Inventor Derrick Jason Birum, Richard Donald Ellis and Jeffrey Lee Tinker  
 Invention Title SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF  
 U.S. Filing Date January 31, 2000  
 U.S. Application No. 09/494,765  
 Examiner Phone No. 0  
 Art Unit 2762  
 File History:  
 Small Entity NO  
 Assigned To Metrowerks, recorded on 04/28/03 at Reel 013609, Frame 0862  
 General Authorization Filed: January 31, 2000

	Document	Date Filed with PTO	Date Mailed from PTO	Due Date
1.	Application (w/ Decl., Assign., General Authorization and Information Disclosure Statement)	01/31/2000		
2.	Request for Refund and Small entity Statement	03/15/00		
3.	Acknowledgement of Request for Refund		03/28/00	
4.	Recorded Assignment		04/18/00	
5.	FILING RECEIPT		04/25/00	
6.	European Search Report rcvd from foreign associate		06/20/01	08/20/01
7.	Supplemental Information Disclosure Statement w/EP Search	08/15/01		
8.	Supplemental IDS with 12 References	06/01/03		
9.	Recorded Assignment -Assigned to Metrowerks	04/28/03		
10.	Office Action	04/28/03	07/28/03	
11.	Petition for extension of time; amendment & response	10/28/03		10/28/03
12.	Recalculation of Priority Date with New Prior Art by 5/20/03	10/28/03		
13.	Change of Correspondence Address		4/8/04	
14.	Notice of Abandonment			
15.	Notice of Acceptance of PPA		3/30/04	
16.				
17.				
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23.				

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**ANDREWS**  
ATTORNEYS  
**KURTH LLP**



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andrewskurth.com

J. Scott Denko  
512.320.9259 Direct  
scottdenko@akllp.com@andrewskurth.com

October 29, 2003

**BY EXPRESS MAIL**  
**AIRBILL NO. EV271668782US**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Re: Application No.: 09/494,765  
Title: "Software Analysis System Having An Apparatus For Selectively Collecting Analysis Data From A Target System Executing Software Instrumented With Tag Statements And Method For Use Thereof"  
Filing Date: 01/31/00  
Inventor: Derrick J. Birum, et al  
Assignee: Metrowerks Corporation  
Examiner: A. Khatri  
Group: 2762  
Docket No. 120073.420

Dear Commissioner:

Enclosed for filing please find the following:

1. Revocation of Power of Attorney With New Power of Attorney and Change of Correspondence Address; and
2. Statement Under 37 C.F.R. § 3.73(b).

Please return the postcard confirming your receipt of the enclosed materials.

Yours truly,

ANDREWS KURTH LLP



J. Scott Denko  
Exhibit "C"



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Derrick J. BIRUM

Group Art Unit: 2762

Application No.: 09/494,765

Examiner: A. Khatri

Filing Date: January 31, 2000

Confirmation No.: 3907

Title: SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT UNDER 37 C.F.R. § 3.73(b)

Sir:

METROWERKS CORPORATION, a corporation operating under the laws of the state of Texas, is an owner of the patent application identified above by virtue of either:

- A.  An assignment from the inventor(s) of the patent application identified above, a copy of which is attached.

OR

- B.  A chain of title from the inventor(s), of the patent application identified above, to METROWERKS CORPORATION as shown below:

1. From: Derrick J. BIRUM; Richard D. ELLIS & Jeffrey L. TINKER  
To: APPLIED MICROSYSTEMS CORPORATION  
The document was recorded in the U.S. Patent and Trademark  
Office at Reel 010533, Frame 0680.

2. From: APPLIED MICROSYSTEMS CORPORATION  
To: METROWERKS CORPORATION  
The document was recorded in the U.S. Patent and Trademark  
Office at Reel 013609, Frame 0862.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of METROWERKS CORPORATION.

Dated: 12/29/05

Signature:

Name: David Clifton

Title: Vice-President of Segment Marketing

Company name: METROWERKS CORPORATION



Attorney Docket No.: 120073.420

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicant(s):** Derrick J. BIRUM, et al.

**Group Art Unit:** 2762

**Application No.:** 09/494,765

**Examiner:** A. Khatri

**Filing Date:** January 31, 2000

**Confirmation No.:** 3907

**Title:** SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS**

Sir:

In the above-referenced patent application, I hereby revoke all prior powers of attorney and appoint the **ANDREWS KURTH LLP** attorneys and agents associated with Customer Number 36,485 to prosecute and maintain the patent application identified above and to transact all business in the Patent and Trademark Office connected therewith, including full power of association, substitution, and revocation.

Please address all telephone calls to: **J. Scott Denko** at (512) 320-9259.

Please address all correspondence to **J. Scott Denko** at the address corresponding to Customer Number 36,485, currently:

J. Scott Denko  
ANDREWS KURTH LLP  
Suite 1700  
111 Congress Ave., Suite 1700  
Austin, Texas 78701

I am the:

Assignee of record of the entire interest. (Statement under 37 C.F.R. § 3.73(b) is attached).

Dated: 10/29/03

Signature:

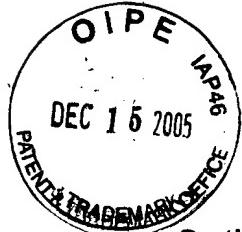
Name:

Title:

Company name: **METROWERKS CORPORATION**

David Clifton

Vice-President of Segment Marketing



On the date stamped hereon, the following was received in the U.S. Patent and Trademark Office:

Applicant: BIRUM Docket No. 120073-920  
Assignee: Metrowearz Resp. Atty: DENKO  
Filing Date: 11-31-00 Date Mailed: 10-29-03  
Serial No.: 09/1494,765 Date Due:

Title: Software Analysis System Having An Aggregator  
for Selectively Collecting And Storing Data...

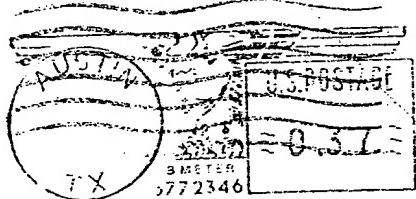
- Transmittal Letter  
 Application PCT  Utility  Conversion  
Prov  Div  Cont  CPA  Reissue  
Spec  pages; Claims  pages  
Drawings  pages; Abstract  pages  
 Declaration  POA  
 Form 1449, IDS  
 Assignment w/ Recordation Cover Sheet  
 Cert. of Mailing, First Class  
 Authorization to Charge Deposit Account

50-0897

Cert. of Express Mail No.

E 1271668-782 US

Other Statement under 37 CFR 8.3, 73(b)  
Redirection of POA with new POA and change correspondence address



ATIN: INTELLECTUAL PROPERTY SECTION  
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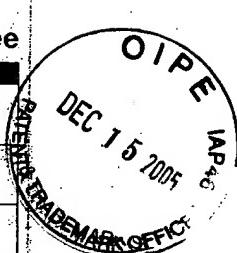
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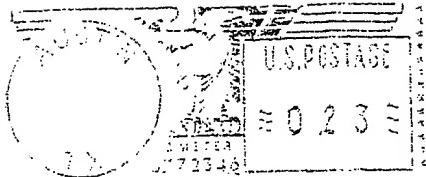
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On the date stamped hereon, the following was **RECEIVED**  
received in the U.S. Patent and Trademark Office:

APR 19 2004  
Applicant: Derrick Brinum Docket No. 650057-420  
Assignee: Metrowerks Corp Resp. Atty: Den OFFICE OF PETITIONS  
Filing Date: 1/31/00 Date Mailed: 4/16/04  
Serial No.: 09/494 765 Date Due:  
Title: Software Analysis System Having An Algorithm Selecting Velocity  
Analysis Data from a Target System . . .

- Transmittal Letter  
 Application PCT  Utility  Conversion  
Prov  Div  Cont  CPA  Reissue  
Spec  pages; Claims  pages  
Drawings  pages; Abstract  pages  
 Declaration  POA  
 Form 1449, IDS  
 Assignment w/ Recordation Cover Sheet  
 Cert. Of Mailing, First Class  
 Authorization to Charge Deposit Account  
50-0897  
 Cert. Of Express Mail No. EV 33421561645  
 Other Petition to Withdraw Holdin Abandonment Based On  
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**PATENT APPLICATION INFORMATION RETRIEVAL**
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Search results as of: 12-12-2005::11:18:45 E.T.

**Search results for application number: 09/494,765**

Application Number:	09/494,765	Customer Number:	36485
Filing or 371(c) Date:	01-31-2000	Status:	Abandoned -- Failure to Pay Issue Fee
Application Type:	Utility	Status Date:	04-08-2004
Examiner Name:	DAS, CHAMELI	Location:	TC 2100 SPE OF GAU ASSIGNED
Group Art Unit:	2122	Location Date:	09-16-2004
Confirmation Number:	3907	Earliest Publication No.:	-
Attorney Docket Number:	120073.420	Earliest Publication Date:	-
Class/ Sub-Class:	717/131	Patent Number:	-
First Named Inventor:	Derrick Birum, Duvall, WA	Issue Date of Patent:	-
Title Of Invention:	SOFTWARE ANALYSIS SYSTEM HAVING AN APPARATUS FOR SELECTIVELY COLLECTING ANALYSIS DATA FROM A TARGET SYSTEM EXECUTING SOFTWARE INSTRUMENTED WITH TAG STATEMENTS AND METHOD FOR USE THEREOF		

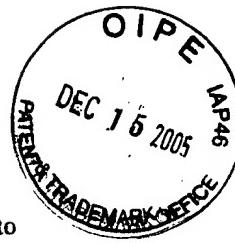
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 Assignments Image File Wrapper Patent Term Extension History**File History**

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Date	Contents Description
09-20-2004	Workflow incoming petition IFW
04-08-2004	Mail Abandonment for Failure to Pay Issue Fee
04-08-2004	Abandonment for Failure to Pay Issue Fee
03-30-2004	Correspondence Address Change
03-30-2004	Change in Power of Attorney (May Include Associate POA)
01-12-2004	Receipt into Pubs
12-01-2003	Workflow - File Sent to Contractor
12-01-2003	Receipt into Pubs
11-28-2003	Dispatch to Publications
11-19-2003	Mail Notice of Allowance
11-19-2003	Mail Formal Drawings Required
11-19-2003	Formal Drawings Required
11-19-2003	Notice of Allowance Data Verification Completed
11-19-2003	Case Docketed to Examiner in GAU
11-10-2003	Case Docketed to Examiner in GAU
11-07-2003	Date Forwarded to Examiner
10-28-2003	Response after Non-Final Action
10-28-2003	Request for Extension of Time - Granted
09-23-2003	Case Docketed to Examiner in GAU
05-06-2003	Information Disclosure Statement (IDS) Filed
04-28-2003	Mail Non-Final Rejection
04-24-2003	Non-Final Rejection
03-19-2002	Case Docketed to Examiner in GAU
03-13-2002	Case Docketed to Examiner in GAU
08-17-2001	Information Disclosure Statement (IDS) Filed
10-06-2000	Case Docketed to Examiner in GAU
05-17-2000	Case Docketed to Examiner in GAU
01-31-2000	Information Disclosure Statement (IDS) Filed
04-12-2000	Application Dispatched from OIPE
04-12-2000	Correspondence Address Change
02-28-2000	IFW Scan & PACR Auto Security Review
02-07-2000	Preexamination Location Change
02-07-2000	Initial Exam Team nn

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Respond to the Notice of Abandonment by one of the following:

## Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f).

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA  
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

## Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450  
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

## Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.